

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

E. L. COX, COMMISSIONER OF INSURANCE
FOR THE STATE OF MICHIGAN,

Petitioner,

File No. 98-88265-CR

v

Hon. James. R. Giddings

MICHIGAN HEALTH MAINTENANCE
ORGANIZATION PLANS, INC., a
Michigan health maintenance organization,
doing business as OmniCare Health Plan,

Respondent.

E. John Blanchard (P28881)
William A. Chenoweth (P27622)
David W. Silver (P24781)
Assistant Attorneys General
Attorneys for Linda A. Watters, Commissioner
of the Office of Financial and Insurance Services
Insurance & Banking Division
P. O. Box 30754
Lansing, MI 48909
(517) 373-1160

**PETITION FOR LIQUIDATING RECEIVERSHIP AND DECLARATION OF
INSOLVENCY OF OMNICARE HEALTH PLAN**

Linda A. Watters, Commissioner of the Office of Financial and Insurance Services, by
Michael A. Cox, Attorney General of Michigan, moves for an Order for Liquidating
Receivership and Declaration of Insolvency for OmniCare Health Plan ("OmniCare"), as more
fully described below. In support of this Petition, the Commissioner relies on authority granted

to her by Section 8116 and 8117 of the Insurance Code of 1956, as amended, MCL 500.8116 and MCL 500.8117, and on the facts and rationale set forth in this Petition.

I. STATEMENT OF FACTS

1. In 1998 OmniCare Health Plan was placed under seizure as permitted by Chapter 81 of the Insurance Code of 1956, MCL 500.8101 *et seq.* In July 2001, the Commissioner of the Office of Financial and Insurance Services petitioned the Court for an Order of Rehabilitation. Pursuant to MCL 500.8114 the Court appointed the Commissioner as the Rehabilitator of OmniCar Health Plan. On September 11, 2002 the Court entered a final Order of Rehabilitation and Injunctive Relief.

2. OmniCare is a health maintenance organization currently in court-ordered rehabilitation with approximately 63,000 Medicaid members. It provides health care services in southeast Michigan. A majority of its members are recipients of health services under Medicaid. In addition to its Medicaid business, OmniCare also arranges health care services for 10,671 commercial members, and 2,816 federal employees.

3. OmniCare's primary business was a state Medicaid contract with the Michigan Department of Community Health ("MDCH"). The current Medicaid contract expires on September 30, 2004.

4. OmniCare was ineligible to receive a new Medicaid contract because it did not meet all applicable statutory financial requirements set forth in the Michigan Insurance Code including net worth, minimum capital and surplus, and Risk Based Capital. Since OmniCare did not receive a new Medicaid contract, OmniCare will not have any Medicaid members on October 1,

2004. MDCH would have moved the membership to other health plans had OmniCare not reached an agreement with another eligible health maintenance organization.

5. Following a request for bid process, the Rehabilitator filed a Petition on April 8, 2004 seeking approval to sell assets of OmniCare Health Plan to Coventry Health of Michigan, Inc.

6. On May 10, 2004 the Court entered an Order Approving the Rehabilitator's Plan to Sell Assets of OmniCare Health Plan to Coventry Health of Michigan, Inc.

7. On May 17, 2004 the Rehabilitator and Coventry Health of Michigan, Inc. entered an Asset Sale and Purchase Agreement whereby the members of OmniCare Health Plan would be transferred to Coventry Health of Michigan, Inc. effective October 1, 2004. On August 31, 2004, the Rehabilitator and Coventry Health of Michigan, Inc. held a closing on the transaction.

8. Because OmniCare has sold its members under the Medicaid contract to Coventry Health of Michigan, Inc. and its HMO license effective October 1, 2004, OmniCare will have no source of revenue after September 30, 2004.

9. Further transaction of business by OmniCare would be hazardous financially to the creditors of OmniCare and to the public. OmniCare does not satisfy the statutory requirements of the Insurance Code of 1956, as amended, in regards to net worth, minimum capital and surplus, and Risk Based Capital.

10. As reported in the June 30, 2004 quarterly financial statement, OmniCare is insolvent. Omnicare reported net worth as of June 30, 2004 of **negative** \$11.9 million. With negative net worth, Omnicare also does not meet risk-based capital requirements. Risk-based capital is generally only calculated annually and as of December 31, 2003, Omnicare reported it needed at least \$23 million in net worth to comply with risk-based capital requirements.

Omnicare has only increased its net worth by \$604,527 since December 2003. As of June 30,

2004, Omnicare reported **negative** working capital of \$13.6 million. Negative working capital and no revenue source indicates that Omnicare will experience significant cash flow issues and will not be able to pay its obligations in a timely manner.

11. Further attempts to rehabilitate OmniCare would be futile.

12. OmniCare has filed a Certificate of Amendment to its Articles of Incorporation changing its name to Michigan Health Maintenance Organization Plans, Inc., effective October 1, 2004.

II. THE AUTHORITY OF THE COMMISSIONER TO ACT

11. The Commissioner is acting pursuant to authority granted her in Sections 8116 and 8117 of the Insurance Code of 1956, as amended, MCL 500.8116 and MCL 500.8117, which provide in pertinent part:

Sec. 8116. (1) If the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the circuit court for Ingham county for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 8117. The circuit court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the insurer's estate for costs and other defense expenses as justice may require.

Sec. 8117. The commissioner may petition the circuit court for Ingham county for an order directing him or her to liquidate a domestic insurer or an alien insurer domiciled in this state on the following basis:

- (a) Any ground for an order of rehabilitation as specified in section 8112, whether or not there has been a prior order directing the rehabilitation of the insurer.
- (b) That the insurer is insolvent.
- (c) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

III. NOTICE

12. The Commissioner will provide Notice to the directors of OmniCare as provided in Section 8116 of the Insurance Code of 1956, MCL 500.8116, to permit the directors to take such actions as are reasonably necessary to defend against the petition.

RELIEF REQUESTED

Based on the foregoing, the Commissioner requests that the Court enter the attached Order for Liquidating Receivership and Declaration of Insolvency.

Respectfully submitted,

Michael A. Cox
Attorney General



E. John Blanchard (P28881)
William A. Chenoweth (P27622)
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Date: September 30, 2004

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CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

COMMISSIONER OF INSURANCE
FOR THE STATE OF MICHIGAN,

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MICHIGAN HEALTH MAINTENANCE
ORGANIZATION PLANS, INC., a
Michigan health maintenance organization,
doing business as OmniCare Health Plan

Hon. James R. Giddings

A.G. No. 1998053333A

Respondent.

ORDER FOR LIQUIDATING RECEIVERSHIP
AND DECLARATION OF INSOLVENCY

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham
State of Michigan, on the
_____ day of _____, 2004

PRESENT: HONORABLE JAMES R. GIDDINGS
CIRCUIT JUDGE

The Court has considered the "Petition for Liquidating Receivership and Declaration of Insolvency of OmniCare Health Plan" filed by the Commissioner of the Office of Financial and Insurance Services and the Court is fully informed of the circumstances, in part as a consequence of the on-going rehabilitation proceedings. The Court finds that OmniCare Health Plan (whose name was changed to Michigan Health Maintenance Organization Plans, Inc., effective October 1, 2004) fails to meet the financial requirements of the Insurance Code; that as of October 1, 2004 it will have no substantial source of revenue because it will no longer have a Medicaid contract with the State of Michigan; and that the company no longer has a license as an HMO in

Michigan because its license was sold effective October 1, 2004. The Court finds that further attempts to rehabilitate the company would substantially increase the risk of loss to creditors, subscribers and their covered dependents, and the public and that such further attempts would be futile. The Court further finds that the company is insolvent. Accordingly, the Court hereby declares and orders that:

Linda A. Watters, Commissioner of the Office of Financial and Insurance Services of the State of Michigan (OFIS) is appointed Liquidator of Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) and James Gerber is appointed Special Deputy Liquidator for the purpose of liquidating the company as provided in Chapter 81 of the Michigan Insurance Code, MCL 500.8101 *et seq.*

IT IS FURTHER ORDERED that the Commissioner of OFIS is directed to take immediate possession of the company's assets and to administer them under this Court's general supervision. The Commissioner is vested by operation of law with the title to all of the property including bank accounts, contracts, and rights of action, and all of the books and records of Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan), wherever located as of the date of this order of liquidation. The filing or recording of the order with the clerk of the circuit court and the register of deeds of the county in which its principal office or place of business is located or, in the case of real estate, with the register of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded which the register of deeds would have imparted as provided by MCL 500.8118(1).

IT IS FURTHER ORDERED that the Liquidator shall account to this Court no less than annually.

IT IS FURTHER ORDERED that all enrollee and subscriber contracts of Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) are terminated effective October 1, 2004. This does not affect the validity of the enrollee and

subscriber contracts with Coventry Health of Michigan entered into in connection with this Court's May 10, 2004 order.

IT IS FURTHER ORDERED that the powers of the Liquidator shall include all the powers set forth in Chapter 81 of the Michigan Insurance Code as amended, MCL 500.8101 *et seq.*, and such additional powers as this court shall grant from time to time upon petition of the Liquidator.

IT IS FURTHER ORDERED pursuant to MCL 500.8106 that all officers, managers, directors, trustees, owners, employees, or agents of Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan), and all other persons with authority over or in charge of any segment of the affairs of the company, shall cooperate fully with the Commissioner. "Person" shall include a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate. Cooperation requires, among other things:

(a) Prompt replies to any inquiry by the Commissioner including a written reply when requested.

(b) Providing the Commissioner with immediate, full and complete possession, control, access to and use of all books, accounts, documents, and other records, information or property of or pertaining to Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) in the possession, custody, or control of any person or entity.

(c) Providing the Commissioner with full and complete access and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan).

(d) Providing the Commissioner with full and complete access to all legal opinions, memorandum, letters, documents, information, correspondences, or legal advice, attorney/client provided materials and attorney work product materials to or from Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) or any of its officers,

directors, employers or agents related to Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) or in connection to the operation of its business.

As provided by MCL 500.8106(4), any person who fails to cooperate with the Commissioner, or a person who obstructs or interferes with the Commissioner in the conduct of a delinquency proceeding or who violates an order of the Commissioner issued validly under chapter 81 of the Insurance Code may (A) be sentenced to pay a fine not exceeding \$10,000.00, or imprisonment for a term of not more than one year, or both and (B) after a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed \$10,000, or the revocation or suspension of any insurance licenses issued by the Commissioner, or both.

IT IS FURTHER ORDERED pursuant to section 8157, MCL 500.8157, that during the pendency of this Liquidation, an action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this state against the Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) in liquidation or against its assets. Further, effective immediately all persons are ENJOINED from filing an action or proceeding in the nature of an attachment, garnishment, or levy of execution in this state against the assets of Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan).

IT IS FURTHER ORDERED pursuant to section 8124(1) of the Insurance Code, MCL 500.8124(1), that an action at law or equity shall not be brought against Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) or the Liquidator or Deputy Liquidator, whether in this state or elsewhere, and any such existing action shall not be maintained or further presented after issuance of this order. Further, effectively immediately all persons are ENJOINED from filing an action at law or equity against Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) or the Liquidator or Deputy Liquidator, whether in this state or elsewhere, and are immediately ENJOINED from maintaining or further presenting any existing action.

IT IS FURTHER ORDERED pursuant to section 8136(4), MCL 500.8136(4), that a judgment or order against Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) or a person covered by the company, entered after September 30, 2004 and a judgment or order against Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) or a person covered by the company, entered at any time by default or by collusion need not be considered as evidence of liability or of quantum of damages.

IT IS FURTHER ORDERED THAT pursuant to MCL 500.8102(1)(g) and (k) and MCL 500.3529(3), all non-contracted and contracted medical care providers are enjoined from obtaining any judgments and/or balance billing of the subscribers of Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) for medical services rendered prior to the date of this liquidation order.

IT IS FURTHER ORDERED pursuant to section 8118(4), MCL 500.8118(4), that Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) is insolvent.

IT IS FURTHER ORDERED that all claims against the assets of Michigan Health Maintenance Organization Plans, Inc. (formerly known as OmniCare Health Plan) must be made by filing claims in the receivership created hereby. The deadline for filing of claims shall be five (5) months from the date of this order unless otherwise ordered by the Court. Notwithstanding the six-month claims filing period, for any claim to be approved, it must be filed not later than any applicable claims filing deadline imposed by contract between the person making the claim and the company. The claims filing deadline does not extend any applicable contractual deadline for filing claims.

Honorable James R. Giddings
Circuit Judge

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Respondent.

PROOF OF SERVICE

State of Michigan)
) ss
County of Ingham)

STEPHANIE ANDREADIS, being first duly sworn, deposes and says that on September 30, 2004, she served a copy of the PETITION FOR LIQUIDATING RECEIVERSHIP AND DECLARATION OF INSOLVENCY OF OMNICARE HEALTH PLAN upon the following interested parties by depositing the same in a United States Postal Depository in the City of Lansing, Michigan, enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

Arthur B. Davidson
1825 Campau Farms Circle
Detroit MI 48207

Sabrina D. Evans
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Detroit MI 48207

William B. Fitzgerald
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Anita C. R. Gorham
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Detroit MI 48201


STEPHANIE ANDREADIS

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NOTICE OF HEARING

TO: All Interested Parties

PLEASE TAKE NOTICE that Michael A. Cox, Attorney General of Michigan, and
William A. Chenoweth, Assistant Attorney General, will bring the attached PETITION FOR
LIQUIDATING RECEIVERSHIP AND DECLARATION OF INSOLVENCY OF OMNICARE
HEALTH PLAN on for hearing in the above entitled cause on Thursday, October 28, 2004, at

3:00 p.m., or as soon thereafter as parties may be heard, before the Honorable James R.
Giddings.

Respectfully submitted,

Michael A. Cox
Attorney General

A handwritten signature in black ink, reading "William A. Chenoweth". The signature is fluid and cursive, with a large, stylized "W" and "C".

William A. Chenoweth (P27622)
Assistant Attorney General
Insurance & Banking Division
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-1160

Dated: September 30, 2004